

gober | hilgers

LAW FIRM

chris k. gober
gober hilgers pllc

2101 cedar springs road
suite 1050
dallas, tx 75201

214.842.6825 direct
877.437.5755 fax
gober@goberhilgers.com

October 18, 2013

VIA ELECTRONIC MAIL

Mr. Jeff S. Jordan
Supervisory Attorney
Federal Election Commission
999 E Street, NW
Washington, DC 22210

Re: MUR 6753

Dear Mr. Jordan:

GOAL WestPAC ("WestPAC" or "Committee"), through counsel, hereby responds to the complaint designated MUR 6753 alleging violations of the Federal Election Campaign Act, as amended (the "Act"). The complaint hinges on the allegation that WestPAC is an entity "established, maintained, financed or controlled" by Representative Steve Pearce because WestPAC's first, and largest, contribution came from Representative Pearce's principal campaign committee, People for Pearce. We urge the Commission to apply all factors set forth in 11 CFR 300.2(c)(2) and the other relevant facts discussed below to determine that Representative Pearce did not "finance" WestPAC, and to find that WestPAC is not in violation of Commission regulations or the Act.

Procedural Background

WestPAC received notice of the complaint filed by Christy L. French on September 6, 2013, and the Commission subsequently granted the Committee an extension to file its initial response on or before October 7, 2013. The Commission later issued a press release stating that any documents due during the government shutdown could be filed within 24 hours after the

100 CONGRESS AVE
SUITE 2000
AUSTIN, TX 78701
T | 512.354.1787

2101 CEDAR SPRINGS RD
STE 1050
DALLAS, TX 75201
T | 214.842.6829

1028 G ST
LINCOLN, NE 68508
T | 402.218.2106

14301 FNB PKWY
STE 100
OMAHA, NE 68134
T | 402.218.2106

1155 F ST, NW
STE 1050
WASHINGTON, DC 20004
T | 202.417.3529

gober hilgers pllc | www.goberhilgers.com

RECEIVED
FEDERAL ELECTION
COMMISSION

2013 OCT 21 AM 10:07

CELA

11007471110007100

Commission reopened. The Commission resumed operations on October 17, 2013, and it subsequently issued a press release stating that such documents were due by 11:59 p.m. on October 18, 2013.

Summary of the Law

The Act states that any entity "directly or indirectly established, financed, maintained or controlled" by a Federal candidate or officeholder shall not solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office or any election other than an election for Federal office, unless those funds comply with the contribution limits and source prohibitions of the Act. 2 U.S.C. 441i(e)(1). The purpose of this provision was to "stop the use of soft money as a means of buying influence and access with Federal officeholders and candidates...and deter any possibility that solicitations of large sums from corporations, unions, and wealthy private interests will corrupt or appear to corrupt our federal Government or undermine our political system with the taint of impropriety." 148 Cong. Rec. S2096-02 (daily ed. Mar. 20, 2002) (statement of Sen. John McCain).

To determine whether a Federal candidate or officeholder directly or indirectly established, financed, maintained, or controlled another entity, the Commission examines and applies the *ten* non-exhaustive factors identified in 11 CFR 300.2(c)(2)(i) through (x), *as well as any other relevant factors*, in the overall relationship between the Federal candidate or officeholder and the entity. See 11 CFR 300.2(c)(2). The Explanation and Justification accompanying the final rule emphasizes that although there is no *de minimis* exception for a minimal level of financial support, the Commission must utilize an "overall, situation specific approach" weighing all the relevant factors including whether the sponsor provided funds on an ongoing basis to the entity. Prohibited and Excessive Contributions, Fed. Reg. 49064, 49084 (2002) (codified at 11 CFR 100).

Relevant Facts Regarding WestPAC's Fundraising

WestPAC was established on January 9, 2013, and immediately commenced fundraising efforts. Prior to receiving the contribution from People for Pearce, WestPAC had received substantial financial commitments from the Committee's board members (although no final, specific amount was determined at this time, at least one agent of WestPAC assumed the commitments would exceed \$100,000). The same agent recollects that Representative Pearce was made aware of such commitments as well as a proposed budget for the Committee that exceeded \$1 million prior to WestPAC receiving the contribution from People for Pearce. Given that WestPAC had already begun receiving significant financial commitments from its board members, the Committee did not intend for the contribution from People for Pearce to function as "seed money" or to constitute a substantial portion of WestPAC's funds.

On or about the same time, WestPAC was also engaging in general discussions with potential Advisory Board members regarding the Committee's fundraising and proposed activities. On January 24, 2013, WestPAC hosted a meeting in which agents of the Committee formally presented a plan regarding WestPAC's fundraising and proposed activities to at least 12 potential Advisory Board members. During that meeting, WestPAC's "call to action" for the potential Advisory Board members in attendance included accepting a role on the Advisory Board and making a financial commitment to the Committee. A number of those in attendance agreed to join the Advisory Board upon conclusion of the meeting and, within 10 days following the meeting, WestPAC had received financial commitments in a total amount exceeding \$500,000. In other words, the sum of \$10,000 represented no more than 1/50th (*i.e.*, an insubstantial portion) of WestPAC's expected receipts, a significant amount of which the Committee expected to collect from its Advisory Board members quickly, and an even smaller percentage of the proposed budget that had been conveyed to Representative Pearce prior to receiving the contribution from People for Pearce.

Shortly after the contribution from People for Pearce was received, a number of the Advisory Board members that previously made substantial financial commitments to WestPAC decided to first contribute funds to another unrelated initiative that required funds for immediate activities. The decision was out of Representative Pearce's control and, to WestPAC's knowledge, it was made unbeknownst to Representative Pearce. Furthermore, WestPAC representatives, including the Committee's Executive Director and Treasurer, were unaware that such actions could cause the \$10,000 received from People for Pearce to potentially result in WestPAC being deemed an entity "established, maintained, financed or controlled" by Representative Pearce. As explained above, that was not the intent of the contribution.

As of September 30, 2013, WestPAC had raised \$45,000 from contributors other than People for Pearce and had fully refunded the \$10,000 at issue in this complaint. Even if the Committee had not refunded such funds, however, the contribution from People for Pearce would have represented approximately 22% of WestPAC's receipts. The Committee had also spent \$38,391.20 during the same period, meaning the contribution from People for Pearce would have barely paid for one-quarter of WestPAC's expenses.

WestPAC did not intend for the contribution from People for Pearce to function as "seed money" for the Committee or constitute a substantial portion of WestPAC's funds, and the Committee should be punished for the arbitrary timing of its fundraising receipts. Absent such intent, the Committee does not believe that punishing it will further the Commission's interest in "stop[ping] the use of soft money as a means of buying influence and access with Federal officeholders and candidates...and deter any possibility that solicitations of large sums from corporations, unions, and wealthy private interests will corrupt or appear to corrupt our federal Government or undermine our political system with the taint of impropriety."

Applying the Ten Factors

On balance, the totality of the factors in 11 CFR 300.2(c)(2) suggest WestPAC was not directly established, financed, maintained, or controlled by Representative Pearce. When determining whether a sponsor has financed an entity, the Commission must consider the context of the overall relationship looking at such factors including, but not limited to, whether the sponsor: (i) owns controlling interest in the entity, (ii) has the authority to participate in governance of the entity, (iii) has the ability to hire and fire employees of the entity, (iv) has overlapping membership with the entity indicating a formal ongoing relationship, (v) has common officers or employees with the entity, (vi) has any employees who were employees of the entity, (vii) provides funds in a significant amount or on an ongoing basis to the entity (viii) arranges for funds in a significant amount for the entity, (ix) had an active or significant role in the formation of the entity, and (x) has similar patterns of receipts or disbursements suggesting an ongoing relationship with the entity. 11 CFR 300.2(c)(2).

Neither Representative Pearce nor People for Pearce have or have had (i) a controlling interest in WestPAC, (ii) the authority to participate in governance of WestPAC, or (iii) the ability to hire and fire employees of WestPAC. Rather, the Committee is governed by an engaged and independent Board of Directors¹ that is vested with the management and affairs of the entity. For example, the Board of Directors, not Representative Pearce, drafted and adopted bylaws and has the authority to make personnel decisions for WestPAC. Furthermore, Representative Pearce has never attended or participated in a Committee board meeting.

WestPAC and People for Pearce do not have overlapping directors or officers. The complaint cites Jason Heffley's previous roles as Representative Pearce's former deputy chief of staff and campaign manager as evidence that Representative Pearce "financed" the Committee; however, Mr. Heffley does not currently work for Representative Pearce in any capacity, and the Representative's willingness to support an entity that a former employee is involved with should not be confused with an attempt to create a "successor entity." Furthermore, the plain language of 11 CFR 300.2(c)(2)(vi) contemplates a situation where a former employee of the entity (here, WestPAC) becomes an employee of the alleged sponsor (here, Representative Pearce). Under the specific facts presented here, the situation is the opposite.

Similarly, the complaint cites the fact that Phillip Pearce, Representative Pearce's brother, serves as WestPAC's Treasurer. Frankly, the Committee hired Phillip Pearce to serve in this capacity because apparently there are not an abundance of consultants who provide FEC reporting services to political committees in New Mexico, and he was the only consultant known to the Committee who provides such services. Notably, Phillip Pearce was hired to provide FEC

¹ Jason Heffley, Mark Murphy, and Mark Veteto comprise WestPAC's Board of Directors. Representative Pearce is not and has not served as a Director of the Committee.

reporting and accounting services for WestPAC and does not serve on the Committee's Board of Directors or Advisory Board, does not have the authority to participate in the governance of WestPAC, and does not have the ability to hire and fire employees of the entity (nor, according to Phillip Pearce, does he with People for Pearce). Based on the facts, Phillip Pearce's familial relationship with the Representative should not be used to imply control over his independent activities or the professional FEC reporting services he provides to other political committees.

As explained above, Representative Pearce made a one-time contribution to WestPAC that was intended to constitute an extremely small percentage of the Committee's fundraising. Even if such contribution were deemed by the Commission to be "substantial," the significance of such a finding is undercut by the fact that Representative Pearce (i) did not provide funds on an ongoing basis to the entity, (ii) did not solicit or arrange for funds in a significant amount for the entity, and (iii) has not had a similar pattern of receipts or disbursements suggesting an ongoing relationship with the entity.

The Commission's ten factors, taken as a whole, indicate that People for Pearce was a one-time supporter of WestPAC but far from a "sponsor" under 11 CFR 300(c)(2). Indeed, nine of the ten factors suggest People for Pearce did not establish, maintain, or control WestPAC.

Distinguishing Advisory Opinions Regarding 11 CFR 300(c)(2)

Just as the complainant focuses on only one of the ten factors in 11 CFR 300.2(c)(2), the complainant cherry-picks limited information from the Commission's advisory opinions ("AOs") regarding 11 CFR 300(c)(2) to try to justify her allegation. If the Commission conducts more than a cursory review of these AOs; however, then we believe that it will determine that the facts and circumstances existing in the instant matter are distinguishable.

First, such advisory opinions can be distinguished based on the requestors' underlying intent. In AO 2006-04 (Tancredo), AO 2004-29 (Akin), and AO 2003-12 (Flake), each of the requesting Members of Congress were, in effect, attempting to determine how much financial and operational involvement they could have with an entity before the entity would be deemed "directly or indirectly established, financed, maintained or controlled" by the Member. In contrast, the complainant in this case is attempting to "back-door" Representative Pearce into a formal relationship with WestPAC that, to our knowledge, he did not intend to have.

Second, unlike the scenario cited in the Tancredo AO, WestPAC did not intend for the contribution from People for Pearce to function as "seed money" for the Committee or constitute a substantial portion of WestPAC's funds. As described in that AO, Representative Tancredo played a major role in the formation of the new entity, Defend Colorado Now, which then remained enmeshed with Representative Tancredo and his campaign committee. Furthermore, Tancredo for Congress Committee proposed contributing up to \$50,000 to Defend Colorado

GOAL WestPAC
October 18, 2013
Page 6 of 6

Now in addition to sharing its polling data and general campaign strategy. Finally, Representative Tancredo made the specific ballot initiative that was being advanced by Defend Colorado Now the focus of his re-election campaign, and he even proposed using his own campaign funds to distribute advertisements to support the ballot initiative. After examining the overall relationship between Tancredo for Congress Committee and Defend Colorado Now, the Commission determined that the combination of several factors, beyond just the financial contribution, would constitute a "financing" of Defend Colorado Now by Tancredo for Congress Committee. In short, no such enmeshing exists in the instant case.

Similarly, in AO 2003-12 (Flake), Representative Flake "had an active and significant role in the formation" of the sponsored entity, Stop Taxpayer Money for Politicians Committee ("STMP"). Representative Flake's involvement included signing STMP's formation documents, serving as STMP's Chairman, and having his campaign staffers open bank accounts for STMP. Here, the complainant has not provided any facts that justify the conclusion reached in the Flake AO.

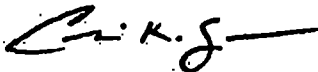
There have also been instances where Members of Congress were significantly involved with an entity, but the Commission determined that their activities still did not rise to the level of sponsoring the entity under 11 CFR 300.2(c). For example, in AO 2004-29 (Akin), Representative Akin's extensive involvement with a ballot initiative committee did not rise to the level of financing an entity even though his re-election campaign focused on the same ballot initiatives and he proposed raising funds for the entity.

Conclusion

We urge the Commission to apply all factors set forth in 11 CFR 300.2(c)(2) and other the relevant facts discussed above to determine that Representative Pearce did not "finance" WestPAC and to find that WestPAC is not in violation of Commission regulations or the Act.

Thank you for your consideration of this matter. If you require additional information, or if I can be of any assistance, then I can be reached at (214) 842-6825.

Sincerely,



Chris K. Gober
Counsel, GOAL WestPAC